



The Competitive Carriers Association

Rural Cellular Association

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October 6, 2011

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: CC Docket No. 01-92
WC Docket No. 10-90
WC Docket No. 07-135
WC Docket No. 05-337
GN Docket No. 09-51**

Dear Ms. Dortch:

On October 4, 2011, Steven K. Berry, President and CEO of RCA; Tim Donovan, VP of Legislative Affairs of RCA; In-Sung Yoo, Assistant Regulatory Counsel of RCA; Jeffrey H. Blum, Senior VP & Deputy General Counsel of DISH Network (DISH); and I met with Angela Kronenberg, Legal Advisor to Commissioner Clyburn, to discuss universal service reform. The meeting addressed the ongoing concerns of competitive carriers regarding some of the wireline-centric reform proposals under consideration, as well as the uncertainty surrounding CETC access to high-cost support during the transition to a new wireless broadband funding mechanism. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

As RCA's most immediate concern, RCA discussed how uncertainty surrounding transition to a standalone Mobility Fund has delayed existing deployment plans, threatens to put future broadband investment on hold, and adversely impacts potential new entrants. RCA continues to push for a sufficient amount of support, use of a cost model with success-based portability¹ and opposes the use of reverse auctions in a reformed universal service fund (USF).² But in the near-term, the business concerns of RCA's carrier members also require immediate focus on the potential phase down of current high-cost support. The insufficient level of funding allocated to the Mobility

¹ Letter of Steven K. Berry, President & CEO, RCA, and Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Aug. 3, 2011) at 5-8 [hereinafter *ABC Plan Letter*].

² *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, *Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (Apr. 18, 2011) at 5-6, 9, 17-19 [hereinafter *CAF NPRM Comments*]; *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, *Reply Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (May 23, 2011) at 10-16 [hereinafter *CAF NPRM Reply*].

Fund is a major concern, but the possibility of high-cost support elimination without a delineated replacement mechanism compounds that uncertainty, a crucial issue for carriers with financial commitments of 10 or more years. RCA described how this uncertainty has and will continue to harm wireless carriers and the consumers they serve, while providing wireline carriers a competitive head start. We discussed how the goal of universal service is to serve the unserved and that piecemeal reform would undermine that aim.

The potential withdrawal of high-cost support has already negatively impacted established build-out plans. Decommissioning cell sites would harm consumers, local business and public safety.³ And once shut down, there is no guarantee that subsequent funding would revive those sites. RCA urged the FCC to allow current CETCs receiving USF support the opportunity to determine whether they will have access to USF under the FCC's new mechanism to avoid stranded investment. The Commission must ensure sufficient funding for wireless CETCs and delay phase down of existing support until a replacement funding mechanism has been established and implemented.⁴ A well-reasoned and rational glide path to high-cost mobile broadband funding must adhere to principles of competitive and technological neutrality and ensure vital services are not affected during this transitional phase.

RCA reiterated that even as diverse industry segments debate over the merits of various technologies and approaches to USF reform, consumers have already made their choice clear and that choice is wireless.⁵ RCA also discussed the wind-fall that would result, at the expense of the consumer, if wireline companies using high-cost funds distributed on a wire center basis actually build out *wireless* networks. Consumer preference must factor into the Commission's eventual reform decisions.

RCA and DISH also expressed our staunch opposition to a Right of First Refusal (RoFR) for wireline carriers as it is wildly anti-competitive and completely unjustified.⁶ A RoFR ignores the

³ *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, Comments of MTPCS, LLC d/b/a Cellular One*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Aug. 24, 2011) at 28.

⁴ *See CAF NPRM Comments* at 20–21; *CAF NPRM Reply* at 5.

⁵ Local Telephone Competition Report at 24 (Mar. 11, 2011); Press Release, IDC, IDC: More Mobile Internet Users Than Wireline Users in the U.S. by 2015 (Sept. 12, 2011), <http://www.idc.com/getdoc.jsp?containerId=prUS23028711>; NTCA 2011 Wireless Survey Report at 3.

⁶ *ABC Plan Letter* at 3–4; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Aug. 24, 2011) at 14–17 [hereinafter *ABC Plan Comments*]; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, Reply Comments of RCA – The Competitive Carriers Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Sept. 6, 2011) at 3, 6, 10–11 [hereinafter *ABC Plan Reply*]; Letter of Steven K. Berry, President & CEO, RCA – The Competitive Carriers Association; Keven K. Lippert, Vice President & General Counsel, ViaSat, Inc.; Jeffrey H. Blum, Senior Vice-President & Deputy General Counsel, DISH Network L.L.C., EchoStar Technologies L.L.C.; Lisa R. Scalpone, Vice President & General Counsel, WildBlue Communications, Inc.; Dean A. Manson, Senior Vice President, General Counsel & Secretary, Hughes Network Systems, LLC, to Julius Genachowski, Chairman, FCC, et al. (Sept. 20, 2011) at 1.

realities of the market and picks winners and losers with nothing to justify such favoritism. This technologically-biased policy ignores the efficiencies and cost-effectiveness that wireless services offer, has no basis in the Telecommunications Act and cuts the consumer out of the equation.⁷ A RoFR entrenches a government-sanctioned monopoly provider and is nothing more than a wireline attempt to preclude competition. RCA noted that the potential for additional funding from support passed over by carriers eligible for a RoFR was not a sufficient counter-balance to these anti-competitive effects. Without a guaranteed amount of funds to provide certainty, additional support could not be accounted for in carriers' business plans.

RCA also discussed its ongoing concern with the proposed \$300 million allocation for a wireless fund.⁸ RCA has advocated that \$1.5 billion—half of what the wireless industry currently contributes—would be an equitable allocation,⁹ but that RCA could support a Mobility Fund with less than \$1.5 billion if it includes a sufficient amount for annual operating expenses and if the largest wireless carriers and RLECs are prohibited from participating.¹⁰ To illustrate the need for higher levels of allocation to wireless deployment, RCA referenced a recent poll commissioned by U.S. Cellular that found 63 percent of consumers believe the appropriate level of investment for additional broadband in rural areas is approximately 50-50 between fixed and mobile services.¹¹ Further, RCA noted that failure to account for annual operating expenses would likely favor large carriers.

In addition to the amount of the Mobility Fund, RCA expressed its opposition to the use of anticompetitive reverse auctions¹² and its support for a forward-looking cost model, coupled with portability. If, however, the FCC decides to use reverse auctions to distribute USF, RCA has been asked to develop a list of proposed conditions that would accompany USF support or possible bidding credits to existing wireless CETCs. RCA has long supported tying awards of high-cost support to public interest obligations within the carrier's control, and RCA's members are willing and able to meet reasonable public interest obligations that the Commission may choose to adopt as conditions of USF support.¹³ RCA agrees that all broadband connectivity support should also be subject to specified public interest obligations, including interconnection, data roaming, and interoperability.¹⁴

⁷ *Id.*

⁸ *In re Universal Service Reform Mobility Fund, Comments of Rural Cellular Association*, WT Docket No. 10-208 (Dec. 16, 2010) at 9–11; *In re Universal Service Reform Mobility Fund, Reply Comments of Rural Cellular Association*, WT Docket No. 10-208 (Jan. 18, 2011) at 4–5.

⁹ *ABC Plan Comments* at 13–14; *ABC Plan Reply* at 8.

¹⁰ Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Sept. 27, 2011) at 2.

¹¹ Letter of David A. LaFuria, Counsel, U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Sept. 29, 2011) at 1.

¹² See *CAF NPRM Comments* at 5–6, 9, 17–19; *CAF NPRM Reply* at 10–16; *In re Mobility Fund*; Connect AmericaFund; A National Broadband Plan for Our Future; High-Cost Universal Service Support, *Comments of Cellular South, Inc.; NE Colorado Cellular, Inc. d/b/a Viaero Wireless; Rural Cellular Association; Westlink Communications, LLC*, WT Docket No. 10-208; WC Docket Nos. 10-90, 05-337; GN Docket No. 09-51 (Dec. 16, 2010) at 4–23.

¹³ Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Sept. 27, 2011) at 2.

¹⁴ *Id.*

RCA strongly urges that the FCC bring some level of near-term certainty to USF reform in order to allow wireless carriers to properly forecast their financial commitments and ensure continued service to their customers and the public at large. As the FCC continues to piece together the components of a reformed high-cost fund, it must at the same time establish distribution of new wireless broadband support before phasing down current CETC support. Failure to do so would exacerbate an already difficult situation for wireless carriers and leave rural consumers unserved.

Sincerely,

/s/

Rebecca M. Thompson
General Counsel

cc: Angela Kronenberg